



# COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0165

## United States Copyright Claims Board

READ ASAP LTD

CLAIMANT

v.

Cloudflare, Inc.

RESPONDENT

### SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board finds that your claim, as amended, still does not comply with the requirements of the CASE Act and related regulations. The claim cannot move forward unless it is properly amended.

If you wish to proceed with this claim, you must file a second amended claim by February 17, 2023. If you do not, the Board must dismiss your claim without prejudice, although you may file again in the future before the Board or in federal court. There is no additional filing fee for a second amended claim. If you amend your claim and it is found compliant, you will be notified and directed to proceed with service. However, if your second amended claim also is found not to comply, the Board will dismiss the proceeding without prejudice. 17 U.S.C. § 1506(f)(1)(B), [37 C.F.R. § 224.1\(d\)](#).

To make your second amended claim compliant, you must resolve the issues identified below. [37 C.F.R. § 224.1\(c\)\(2\)](#). You may also choose to correct or edit any errors or other information in your amended claim before you file a second amended claim. You do not need to provide a legal argument in your claim – just a statement of facts and circumstances. Being specific in your description gives the other party and the Board more information about your claim. There is no character limit so please be as detailed as possible.

#### Copyright Infringement – Infringing Activity

You have brought a copyright infringement claim before the Board. Your claim must make enough factual allegations to support each “element” of the claim. The elements of a copyright infringement claim are:

1. You own a valid copyright in the work, or have been given an exclusive license to the copyright rights at issue in the work,
2. The respondent used one of your exclusive rights in the work without permission,
3. The respondent had access to your work, meaning a reasonable opportunity to view or hear your work, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

Your amended claim does not provide enough facts about allegedly infringing activity by the respondent, Cloudflare Inc. Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly display the work, and to make a “derivative work,” which is a work based on the original work. Someone who does one of those activities without the copyright owner’s permission may be infringing the copyright, unless they have a legitimate defense. However, your amended claim does not allege that Cloudflare itself reproduced, distributed, or publicly displayed your work.

The “Describe the infringement” section of your amended claim describes allegedly infringing activity by others not listed as respondents to the claim: “The infringing sites have taken my book that I’ve licensed to other platforms and put it in public for free.” In the “Description of harm suffered and relief sought” section, you allege, “pirated websites put our works on their platforms (<https://infobagh.com>).” A video entitled “Infringement facts,” filed as supplemental documentation, appears to depict use of the allegedly infringing work on the website [infobagh.com](https://infobagh.com). Your “List of Evidence,” which describes those supplemental documents, states that the video “can prove that pirated websites infringe our works.” Those allegations and materials might support an infringement claim against the person or entity that posted the work on [infobagh.com](https://infobagh.com), rather than against Cloudflare.

By contrast, your allegations about Cloudflare do not show how it committed infringement. Instead, you appear to describe responses that Cloudflare made, which you found unsatisfactory, to your inquiries about the allegedly infringing “pirated website.” Your amended claim alleges, “We tried to communicate with the service provider called CLOUDFLARE, INC., but the service provider provided us with an incorrect contact, which led us to still be unable to contact the actual operator of the pirated website.” You also state that a file submitted with your claim, entitled “[Evidence6: Chat record with the claimant \(cloudflare\)](#),” proves that “the website service provider [Cloudflare] did not fulfill the reasonable duty of care and did not provide us with effective information, which made our rights protection work particularly difficult to carry out[.]” Your contentions that Cloudflare did not assist you in enforcing your copyright in the manner you wanted, without more, would not make it liable for infringement.

To address this issue in a second amended claim, please provide more details and background regarding Cloudflare’s allegedly infringing activity. If you contend that Cloudflare itself infringed your copyright, your second amended claim must state facts that describe acts by Cloudflare, not by a third party, that constitute copyright infringement. Alternatively, if you contend that Cloudflare is liable for infringement based upon infringing activity undertaken taken by another person or entity, you must allege facts showing that Cloudflare either (1) knew about that infringing activity and either induced, caused, or substantially contributed to or assisted that activity, or (2) had the right and ability to supervise or control the infringing activity and received a direct financial benefit from that activity.

## Copyright Infringement Claim – Online Service Provider

Further, if Cloudflare is a provider of (or operator of facilities for) online services or network access, and you bring a second amended claim based on its storage of, referral to, or linking to infringing material posted by others, you must affirm that you sent Cloudflare an effective takedown notice and that Cloudflare failed to appropriately respond to that notice, and you must state facts that support those affirmations.

Special rules apply to infringement claims brought against an entity known as an online service provider (OSP) that provides online services to store (and make available), refer to, provide access to, or link to material that is available online. OSPs include content-sharing websites and internet search engines, among other services. Section 512 of the Copyright Act provides what are known as “safe harbors,” which shield OSPs from paying damages for copyright infringement claims if, among other things, they take steps to quickly remove or disable access to infringing material when a copyright owner notifies them about the infringement through a proper takedown notice. To bring a viable infringement claim against an OSP that is otherwise eligible for the safe harbor, you must state facts that indicate the respondent did not follow these procedures. Specifically, in addition to alleging that the OSP engaged in acts constituting infringement, the claim cannot be compliant unless you affirm that you sent the OSP an effective section 512 notice of infringement, *and* that it “failed to remove or disable access to the material expeditiously upon the provision of such notice.” 17 U.S.C. § 512(f)(1)(C)(i).

Your amended claim identifies Cloudflare as an OSP, repeatedly describes Cloudflare as a “service provider,” and asserts that it has not “take[n] our infringing content off” in response to your “deletion notice to the service provider based on 512 DMCA.” Accordingly, if you file a second amended claim, you should carefully reconsider your responses to the four OSP questions in the claim form. In the section of the claim where you “describe the infringement,” provide facts supporting your response to each of the four OSP questions. The four OSP questions are:

1. Are any of the respondents online service providers?
2. Are you bringing a claim against the online service provider due to their storage of or referral or linking to infringing material posted by others?
3. Did you send the online service provider a “takedown notice” as required by section 512 of the Copyright Act?
4. Did the online service provider fail to expeditiously remove or disable access to the material after you sent a takedown notice?

A proper infringement claim against an OSP that stores, refers, or links to allegedly infringing material must answer “Yes” to each OSP question. If you cannot answer “Yes” to each OSP question and your claim is based on Cloudflare’s conduct as an OSP as described above, you may not proceed with your claim. Here, however, you may not be able to answer “Yes” to the third question about your takedown notice because it appears that you may not have sent Cloudflare an effective notice as required by section 512. To be “effective,” a takedown notice must include substantially everything listed in [section 512\(c\)\(3\)\(A\)](#), including: “A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.” 17 U.S.C. § 512(c)(3)(A)(i). Your [“Notice of Copyright Infringement”](#) form, filed as a supplemental document, includes a space for a “physical or electronic signature”; that space is stamped “For and on behalf of READ ASAP LTD,” but it is not signed. If you submit a second amended claim, then the takedown notice you identify must meet substantially all of the elements required by section 512(c)(3)(A).

Please visit the [section 512 page](#) and the discussion at pages 18-19 of the chapter on [Starting an Infringement Claim](#) in the CCB Handbook for additional information about what section 512 of the Copyright Act requires for an infringement claim against an online service provider.

## Final Amendment

Your amended claim resolves some, but not all, of the issues raised in the November 4, 2022 noncompliance order. If you file a second amended claim, it must state enough facts in support of the claim alleged. **This is your third and final opportunity to submit a compliant claim in this proceeding. If you raise any claims that your allegations do not support, the entire proceeding will be dismissed.** 17 U.S.C. § 512(f)(1)(B). In the alternative, you can delete any unsupported claim allegations in your second amended claim.

To submit a second amended claim, log into your eCCB account and take the following steps.

1. From your dashboard, click the **“Amend claim”** button and select your docket number from the dropdown list.
2. Your claim will unlock for editing. The information you originally entered will appear in the same order as in your original claim.
3. Make any necessary edits. If your claim included supplementary documents, you must re-upload any documents you wish to include in the amended claim on the **“Documentation”** page. Please include only documents that are directly related to your claim.
4. Once you have completed your edits, continue to click through the fillable claim form until you reach the **“Review”** page. The Review page includes all the information that you have provided in the claim up to this point. Carefully double-check the information on this page. If you have any corrections, you can select **“Edit”** to revise any entries necessary. Each section of information has an **“Edit”** button, which will take you back to that section so you can make changes. After you make changes, you can click **“Save & review”** to return to the Review page. Please review your claim carefully. Once you submit your amended claim, you will be unable to edit the claim while it is in compliance review.
5. Once you have completed your review and any revisions, you must confirm that the information in your claim is accurate and truthful to the best of your knowledge. To complete the declaration, type your full name into the **“Digital signature”** box near the bottom of the **“Review filing”** page and click **“Agree & submit.”**

If you have questions, please contact [asktheboard@ccb.gov](mailto:asktheboard@ccb.gov). Include your docket number in the subject line. The Board is unable to provide legal advice. We can only provide legal information and assistance concerning Board procedures and requirements. If you would like to seek further guidance from a lawyer or a law student at reduced or no cost, please visit the [Pro Bono Assistance](#) page on ccb.gov. You may also refer to the [Compliance Review](#) chapter of the CCB Handbook for more assistance.

Copyright Claims Attorney

January 18, 2023